

Why is the reimbursement rate for running SW-846 Method 8260B “suddenly” being reduced to the rate for running SW-846 Method 8021B?

This is not a new position, or change, as the ELTF Program has been consistent in addressing this issue over the years. Best treatment of this specific topic can be found in Appendix 2 of the RISC Technical Guide (dated February 15, 2001). The practice of using the more expensive SW-846 Method 8260B without prior IDEM approval, based on a demonstrated need, etc., is contradictory to the ELTF Rule requirement for cost effectiveness. When run as recommended, SW-846 Method 8021B provides reliable and useable results for the petroleum compounds; BTEX/MTBE, naphthalene, and many others. With technical support of the Chemistry Section of the Office of Land Quality, this has been the consistent ELTF Program position on this issue.

ELTF Program claim reviewers noticed a recent increase in the number of claims requesting reimbursement for the higher costing SW-846 Method 8260B shortly after the new rates went into effect on March 26, 2011. These changes to SW-846 Method 8260B were made without consulting the IDEM Project Manager, or providing reasons for the change. ELTF Program research revealed some interesting facts:

- Some were releases with a long history of successfully using the less expensive SW-846 Method 8021B for the common petroleum chemicals of concern.
- Some included releases where SW-846 Method 8260B had historically been used, but the ELTF was being charged the SW-846 Method 8021B rates.
- There are examples of SW-846 Method 8260B being used, but the ELTF is being charged a lower rate than the SW-846 Method 8021B rates.

Previously denied claims for this cost will be reevaluated in resubmittals, if it can be documented that the use of SW-846 Method 8260B was approved, or it was appropriate for the site specific conditions.

When will the cost of SW-846 Method 8260B be reimbursed at a higher rate than SW-846 8021B?

The Remediation Closure Guide and the Remediation Program Guide produced by the Office of Land Quality becomes effective as of March 22, 2012. As of March 22, 2012 it is appropriate to run SW-846 Method 8260B during the site characterization sampling phase at all LUST sites. It is during this phase of the investigation that soil and ground water sampling plans must be designed to provide the LUST/ELTF Technical Section Project Managers with a complete understanding of all contaminants present at the facility. All contaminants must be identified and reported in the site characterization, and further site investigation, documents submitted to IDEM. During the site characterization at all LUST sites, full QA/QC analysis must be completed on all samples submitted for laboratory analysis. The results must be submitted to IDEM for review. Please follow OLQ submittal guidelines found at www.IN.gov/idem/5064.htm. Once all contaminants are identified, a collaborative decision will be made as to which analytical method is appropriate for the monitoring and closure stages.

How does the ELTF Program address reimbursement of costs for surety bonds, insurance, permits, etc.?

- The ELTF Program does not pay insurance premiums, or bonds that are not site-specific. This would include professional licensing fees, liability insurance, general bonding to work in a county, a town or city, etc. These costs are considered operation overhead/costs of doing business that are already figured into the overall rates in the Rule. For example, an electrician must be registered, bonded, etc. in any Indiana county they want to do work in. We would not reimburse for this type of bonding.
- The ELTF Program does reimburse for permits/fees required by local or state entities/private companies/etc. that are site specific. These costs are required to be paid by the Consultant before they are allowed to perform the work. These expenses are usually paid directly to the entity requiring the fee. There should be backup documentation showing that the fee was paid, is site specific, and that the IDEM Project Manager has approved these costs.
- The ELTF Program does reimburse Surety Bonds required to obtain a permit by local or state entities that are site specific, even if the payment is made directly to the Consultant's provider. There should be some documentation from the entity requiring the payment by the Consultant for site specific work and a site specific receipt from the bond provider.
- The ELTF Program does not pay markup on this type of expense.
- The ELTF Program does not reimburse any refundable deposits made by a Consultant to local or state entities, a public or private utility, or a private company.

When are at least three bids required by the ELTF Program?

The ELTF Program claim reviewers have received many questions and noticed many inconsistencies in the interpretation of the three bid requirement. The intent of the three bid process is three fold: (1) cost control; (2) provide consultants a mechanism to achieve reimbursement when going rates are above the Rule rates, and (3) provide an equal and fair opportunity for all contractors to compete for the work. The Excess Liability Trust Fund Rule 328 IAC 1 addresses bids at 328 IAC 1-3-5(e) in the following sections: DEMOLITION; EXCAVATION; TRANSPORTATION; CORRECTIVE ACTION TECHNOLOGIES; and SITE RESTORATION. It should be noted that bids and/or published unit rates can be used for DEMOLITION, EXCAVATION, TRANSPORTATION, and SITE RESTORATION work.

However, only the bid process can be used for CORRECTIVE ACTION TECHNOLOGIES. At least three comparable and competitive bids for the selected technology (engineered systems, injection of oxygen releasing compounds, EFR events, etc.) approved in the Corrective Action Plan are required. As required by Rule, a copy of the request for proposal (RFP) must be attached. The RFP must show a line item breakdown of the tasks to be performed at a specific site or location in order to verify that all tasks are eligible for reimbursement.

The Rule does allow that the "administrator can approve costs based on less than three (3) bids if a demonstration is provided to the administrator that lower costs for the specified work is not possible or practical." It is best if these situations are addressed in the Corrective Action Plan development stage and approved by IDEM prior to actually doing the work.

Can IDEM provide some guidance on how best to handle the three bid requirement of 328 IAC 1?

In order to process these claims quickly and efficiently, in accordance with an approved Corrective Action Plan, the following items are required or suggested:

- As required by Rule, a copy of the request for proposal (RFP) must be attached. The RFP must show a line item breakdown of the tasks to be performed at a specific site or location in order to verify that all tasks are eligible for reimbursement.
- As required by Rule, a minimum of three comparable, competitive bids that match the line items and location indicated in the RFP must be submitted. Costs based on less than three bids can be approved if it can be demonstrated that lower costs for the specified work is not possible or practical. This documentation is provided with the claim application and subsequently approved by the ELTF Program.
- As required by Rule, bids for the work specified must include installation and labor. However, separate bids may be obtained for installation and labor costs.
- Claim reviewers suggest that the RFP should list the per diem, mileage and lodging expenses (if needed) as a final line item at the end of the proposal. The ELTF Program does not pay the 10% mark-up on these items, so they need to be separated for reimbursement purposes.
- Reimbursement for a system purchase needs to be submitted in one claim with all appropriate costs included once a CAP Implementation report has been approved.
- Reimbursement for a system rental needs to include the purchase price and the agreed upon rental agreement with each claim. This information is required to verify that lease or rental on equipment will not be reimbursed above the purchase price; the ELTF Program can only reimburse up to the purchase price. If a system is moved from one site to another, rental payments made for all sites count toward the purchase price. Failure to include this information will result in the entire rental cost being denied.
- All bid items should be described and identified as bid items on the pay requests.
- Equipment necessary to maintain a remediation system should be included in the bid and not requested separately as part of the Operation and Maintenance.